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**In the Supreme Court of the United States**

**OCTOBER TERM, 1979**

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**PHALA E. BONEY KYZAR, PETITIONER**

v.

**PATRICIA R. HARRIS, SECRETARY OF  
HEALTH, EDUCATION, AND WELFARE**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

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**MEMORANDUM FOR THE RESPONDENT  
IN OPPOSITION**

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**WADE H. MCCREE, JR.**  
*Solicitor, General*

**ALICE DANIEL**  
*Assistant Attorney General*

**ROBERT S. GREENSPAN**  
**CARLENE V. MCINTYRE**  
*Attorneys*  
*Department of Justice*  
*Washington, D.C. 20530*

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Section 202(d)(4) of the Social Security Act, 42 U.S.C. 402(d)(4), provides that "[a] child shall be deemed dependent upon his stepfather or a stepmother \* \* \* for purposes of child's insurance benefits] if \* \* \* the child was living with or was receiving at least one-half of his support from such stepfather or stepmother." Petitioner contends that Section 202(d)(4) establishes only a rebuttable presumption of dependency for a child living with a stepparent. Alternatively, petitioner contends that Section 202(d)(4) is unconstitutional under the Due Process Clause if dependency is conclusively established by the fact that the child was living with the stepparent.

(1)

1. Petitioner is the former wife of the deceased insured, Peter L. Boney. During their marriage, the Boneys had two children, Virginia and Emily. In July 1972, the Boneys were divorced. Mr. Boney continued to support his natural children until his accidental death in September 1974 (Pet. App. A-4).

In June 1974, Mr. Boney remarried. His new wife had two children, Wendi and Shelly, by a previous marriage. These children were supported by their natural father at least through the date of the administrative hearing in this case. Mr. Boney was residing with his new wife and his stepchildren at the time of his death (Pet. App. A-4).

After Mr. Boney's death, petitioner filed for child's insurance benefits on behalf of the Boneys' natural children. Her claim was granted. Thereafter, Mr. Boney's widow filed for benefits for herself and for Mr. Boney's stepchildren. These claims were granted and resulted in a reduction of the original award payable to petitioner on behalf of Mr. Boney's natural children (Pet. App. A-4).<sup>1</sup>

Petitioner contested this reduction in benefits for the Boneys' natural children. Following a hearing, an administrative law judge determined that the reduction was proper. This determination became the final agency decision when the Appeals Council approved it in April 1977 (Pet. 7; Pet. App. A-4). On judicial review, the United States District Court for the Northern District of Alabama upheld the Secretary's determination (Pet. App.

<sup>1</sup>Because Mr. Boney's death was accidental, the nine-month duration-of-relationship requirement of 42 U.S.C. 416(e) is inapplicable to the claim for the stepchildren's benefits. See 42 U.S.C. 416(k)(1)(A).

A-13 to A-19). The court of appeals affirmed on the basis of the memorandum opinion of the district court (Pet. App. A-1 to A-9; 597 F. 2d 68).

2. Under the Social Security Act, a stepchild is eligible for child's insurance benefits if, among other conditions, the stepchild was "dependent" on the insured stepparent at the time of the stepparent's death. 42 U.S.C. 402(d)(1)(C)(ii). The Act further states, in the provision at issue here, that "[a] child shall be deemed dependent upon his \* \* \* [stepparent at the time of the stepparent's death] if, at such time, the child was living with \* \* \* such \* \* \* [stepparent]." 42 U.S.C. 402(d)(4). Petitioner contends that this provision should be construed as establishing only a rebuttable presumption of dependency and that she should have been allowed to introduce evidence that Mr. Boney's stepchildren, although living with him at the time of his death, were not in fact dependent upon him because they were supported by their natural father.

This contention was correctly rejected by the Secretary and the courts below. The text of the statute plainly establishes a conclusive presumption by providing that a stepchild "shall be deemed dependent" when residing with the stepparent. The only other court of appeals to have considered the dependency question under 42 U.S.C. 402(d)(4) has agreed with the courts in this case that the statute creates a conclusive presumption. See *Eisenhauer v. Mathews*, 535 F. 2d 681, 686 (2d Cir. 1976) (footnote omitted; emphasis added):

The "deemed dependent" provision is written in the disjunctive: a child, to be deemed dependent, must have been living with or receiving one-half of his support from the insured stepparent. By this disjunctive language, then, dependency is statutorily

presumed if the child was living with the stepparent or was actually dependent upon the stepparent. *Actual dependency, contrary to appellant's assertions, need not be shown if stepparent and child were living together at the time of the insured stepparent's death.*

Moreover, this Court has interpreted a related provision of the Social Security Act to establish an irrebuttable presumption of dependency. See *Mathews v. Lucas*, 427 U.S. 495 (1976) (upholding constitutionality of 42 U.S.C. 402(d)(3) of the Act, under which an illegitimate "child shall be deemed dependent" upon a parent under certain circumstances, including "living with" the parent). Indeed, Congress' fundamental approach in the Social Security Act is to have a claimant's eligibility for benefits determined conclusively on the basis of objective and easily administered criteria, such as living arrangements, rather than to require a particularized resolution of specific facts in each case regarding such elusive matters as dependency. See, e.g., *Califano v. Boles*, No. 78-808 (June 27, 1979); *Califano v. Jobst*, 434 U.S. 47 (1977); *Mathews v. DeCastro*, 429 U.S. 181 (1976); *Mathews v. Lucas, supra*; *Weinberger v. Salfi*, 422 U.S. 749 (1975). As the Court has recognized, Congress has not made "actual dependency \*\*\* either a sufficient or a necessary condition of eligibility in every case." *Califano v. Jobst, supra*, 434 U.S. at 52 (footnote omitted). The dependency provision of 42 U.S.C. 402(d)(4), as construed by the Secretary and the courts below, is in accord with this general scheme.

3. Petitioner also contends that 42 U.S.C. 402(d)(4), to the extent it establishes a conclusive and irrebuttable presumption of dependency, violates the Due Process Clause. But this Court has repeatedly sustained the

constitutionality of provisions of the Social Security Act that, like 42 U.S.C. 402(d)(4), dispense with proof of actual dependency in each case and instead establish conclusive eligibility presumptions. See, e.g., *Califano v. Boles, supra*; *Califano v. Jobst, supra*; *Mathews v. DeCastro, supra*; *Mathews v. Lucas, supra*; *Weinberger v. Salfi, supra*.<sup>2</sup>

Administrative convenience, ease of application, and certainty of result, all of which are fostered by such statutory presumptions, are important considerations in formulating the conditions for benefits under the Act. "General rules are essential if a fund of this magnitude is to be administered with a modicum of efficiency, even though such rules inevitably produce seemingly arbitrary consequences in some individual cases." *Califano v. Boles, supra*, slip op. 3, quoting *Califano v. Jobst, supra*, 434 U.S. at 53. Congress is entitled to draw "upon its own practical experience \*\*\* [to] tailor[ ] statutory classifications in accord with its calculations of the likelihood of actual \*\*\* [dependency] suggested by a narrow set of objective and apparently reasonable indicators," and such classifications will be set aside only if "Congress' assumptions are so inconsistent or insubstantial as not to be reasonably supportive of its conclusions that individualized factual inquiry in order to isolate each nondependent child in a given class of cases is unwarranted as an administrative exercise."

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<sup>2</sup>In each of these cases, a claimant alleged that he fell within the category of persons Congress intended to benefit under the Social Security Act but that he was barred from proving that fact because of an imprecise conclusive presumption. Here, by contrast, petitioner is receiving benefits under the Act and is merely complaining that her level of benefits has been reduced pursuant to the Act because other claimants were also allowed to recover.

*Mathews v. Lucas, supra*, 427 U.S. at 515-516. "There is no question about the power of Congress to legislate on the basis of such factual assumptions." *Califano v. Jobst, supra*, 434 U.S. at 53. Moreover, these legislative classifications are not rendered invalid by the fact they contain conclusive presumptions concerning eligibility. See *Weinberger v. Salfi, supra*, 422 U.S. at 768-774.

Measured against this standard, the presumption challenged in the instant case is plainly valid. Here, as in *Mathews v. Lucas, supra*, 427 U.S. at 509, "by presuming dependency on the basis of relatively readily documented facts," such as the stepchild's residence with the stepparent, Congress was able "to avoid the burden and expense of specific case-by-case determination in the large number of cases where dependency is objectively probable." Judging this "broad legislative classification \*\*\* by reference to characteristics typical of the affected classes \*\*\*," *Califano v. Jobst, supra*, 434 U.S. at 55, there can be little doubt that the living arrangement of the stepchild is a reasonable indicator of dependency. The Due Process Clause requires no more. See *Weinberger v. Salfi, supra*, 422 U.S. at 768-777.<sup>3</sup>

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. McCREE, JR.  
*Solicitor General*

ALICE DANIEL  
*Assistant Attorney General*

ROBERT S. GREENSPAN  
CARLENE V. MCINTYRE  
*Attorneys*

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<sup>3</sup>Petitioner also contends (Pet. 12) that 42 U.S.C. 402(d) cannot be applied to reduce her children's benefits because they have a "property interest" in the existing level of benefits. This Court has already answered that claim. *Flemming v. Nestor*, 363 U.S. 603, 610-611 (1960). In any event, the scope and extent of property interests are determined by reference to the substantive law that gives rise to such interests (*Bishop v. Wood*, 426 U.S. 341, 344 & n.7 (1976)), which in this case is the Social Security Act. That legislation expressly qualifies petitioner's interest in benefits where, as here, there are stepchildren of the wage-earner residing with him.